

SKAGIT COUNTY HEARING EXAMINER

re: Appeal of Leveck of Administrative
Order to Abate Violation

No.: APL 2026-0003
of CODE 2025-0169

PREHEARING BRIEF

The Skagit County Department of Planning and Development Services (“Department” or “PDS”) respectfully submit this prehearing brief. The Appellants, Mark and Colleen Leveck, violated the Shoreline Management Master Plan (“SMP”) when he reconstructed his boat garage outside the limits of his approved building permit. The Department appropriately issued the Administrative Order to Abate (“AOA”) and asks the Hearing Examiner to affirm this order.

I. ISSUES

Did the Department issue the Administrative Order to Abate in clear error when it determined that the value of the boathouse was determined by the tax assessment amount and not by the average costs of material and labor to build a new one?

II. GOVERNING LAW

A “violation” results from “a failure to comply with SCC Title 14, 15, or 16, including failure to comply with a permit or an administrative order issued pursuant to SCC Title 14, 15, or 16.”¹ SCC 14.09.220 authorizes administrative orders to compel correction of violations and payment of penalties.² An Administrative Order to Abate must contain a statement of the specific code section or other requirements that has been violated and the corrective action to take, among some other requirements.³

¹ SCC 14.09.120(1).

² SCC 14.09.220(1)(a).

³ SCC 14.09.220(2)(d).

III. STANDARD OF REVIEW

Appeals are governed by SCC 14.06.410. “The appellant bears the burden of demonstrating that the decision on the application was clearly erroneous.”⁴ A decision is clearly erroneous if the Examiner is “left with the definite and firm conviction that a mistake has been committed.”⁵

IV. BACKGROUND

The property is located at 33711 South Shore Drive on the shores of Lake Cavanaugh. The property is zoned Rural Village Residential, and given its location is subject to Shoreline Jurisdiction⁶ under the Rural Residential designation.⁷ At issue here is a dilapidated pre-existing structure (a boathouse) located within a standard 100-foot buffer and 50-foot residential setback:⁸



(Exh. 11.5 at 4 (portion))

⁴ SCC 14.06.410(6).

⁵ *Lauer v. Pierce County*, 173 Wn.2d 242, 253 (2011) (quoting *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 829 (2011)).

⁶ SMP 2.01; RCW 90.59.030.

⁷ Exh. 11.1 at 1.

⁸ Exh. 11.8; see Exh. 11.23 at 12 (Email from Leveck to Randy Johnson) (“The boathouse structure had fallen into a state of disrepair due to prolonged exposure to the elements and recent storms from last winter causing additional stress on the structure members.”); Exh.

In January 2024, Leveck applied for a building permit to “[r]epair boat house and replace siding. Install new exterior access door.”⁹ The site plan noted that scope of work was:

Repair of existing boat house with the following work:

- Replacement of siding and roof sheet metal with new Hardi siding and standing seam metal roof.
- Addition of door with header
- Replacement of existing window and garage door.¹⁰

As he was required to,¹¹ Leveck obtained a statement of exemption from a Shoreline Substantial Development Permit on February 21, 2024, for

Repair and maintenance of the existing boathouse to include replacement of the siding and roofing materials, replacement of the garage door, replacement of the window, and installation of a new access door.”¹²

As condition of his exemption Leveck was required to:

1. “comply with all policies and regulations of the Skagit County Shoreline Management Master Program and the Shoreline Management Act RCW 90.58”;¹³ and
2. “strictly adhere to the approved project information and site plan submitted for this proposal.”¹⁴

In the event of a modification, he was required to “request a permit revision prior to the start of construction.”¹⁵

Leveck did not strictly adhere to the project information and site plan. “During the repair process, [Leveck] discovered that more structural 2x4s would need to be replaced; the level of rot created a structural hazard.”¹⁶ “The roofing and siding were compromised, leading to water intrusion that caused some damage to the underlying

⁹ Exh. 11.6 at 1.

¹⁰ Exh. 11.7 at 1; *see also id.* at 2 (“Scope of Work: Repair of existing boat house including replacement of siding and roof materials and addition of door with header”).

¹¹ SMP 2.05.

¹² Exh. 11.9 at 1.

¹³ Exg. 11.9 at 1.

¹⁴ Exh. 11.9 at 2.

¹⁵ Exh. 11.9 at 2.

¹⁶ Exh. 11.21 at 4.

wooden framing. Without the addition of new structural members (stud framing and rafters), the deterioration would have eventually rendered the structure unsafe.”¹⁷ In Leveck’s view “the repairs undertaken were not elective but [1] essential to preserve the structural integrity ... [2] necessary to meet Building Code requirements called out in the permit #BP24-0083.”¹⁸

Despite these modifications to the approved plan, Leveck did not seek a revision of the permit prior to start of construction.¹⁹ It seems he was of the perspective that it was better to ask for forgiveness rather than permission. But it is not better: the Code does not permit forgiveness in this situation.²⁰

In August 2024 County staff met with Leveck and informed him that he had exceeded the scope of his permit and the allowable repairs.²¹ Leveck disagreed with the County’s reliance on the tax assessment of \$1,400 to determine the value and asserted the replacement cost should be determined by material and labor costs to actually replace the structure, which he determined has an average cost of \$28,490.²² Given that the work cost \$11,505,²³ whether the 75% threshold is exceeded depends on how it is calculated.

On March 25, 2026, after Leveck indicated they would not relocate the structure, the County issued an Administrative Order to Abate. It stated a single violation of exceeding the 75% threshold for repairs to a pre-existing nonconforming use.²⁴ The order to abate required the removal or relocation of the boathouse by April 29, 2026.²⁵

¹⁷ Exh. 11.21 at 12.

¹⁸ Exh. 11.21 at 12.

¹⁹ Exh. 11.21 at 4 (“In good faith, [Leveck] made the repairs and called the framing inspector.”).

²⁰ See *Fleming v. Kane County*, 855 F.2d 496, 498 (7th Cir. 1988) (“It is more difficult to obtain forgiveness than permission; therefore, parties should not attempt to evade” the rules.).

²¹ Exh. 11.1 at 1.

²² Exh. 11.1 at 1; Exh. 11.21 at 16.

²³ Exh. 11.1 at 1; Exh. 11.21 at 12.

²⁴ Exh. 11.1 at 2.

²⁵ Exh. 11.1 at 2.

V. ARGUMENT

Development on the shoreline requires either a Shoreline Substantial Development Permit (“SSDP”) or a Statement of Exemption from a SSDP.²⁶ Repairs to structures on the shoreline do not require a SSDP, but an exemption.²⁷ If the structure is pre-existing nonconforming and in need of work, restoration and repairs are limited to no more than 75% of the existing assessed value of the building or structure for tax purposes.”²⁸

Leveck obtained a permit for limited work to repair his nonconforming boathouse.²⁹ In fact he just rebuilt the entire thing.³⁰ He claims structural damage was discovered that required the additional work.³¹ But even if true, he failed to heed the requirement to seek a revision of his permit before starting the new work.³²

Regardless, the work actually done was substantial enough that it cost \$11,505,³³ which is well beyond the limits for a dilapidated boat house assessed at \$1,400.³⁴ But is certainly within the limits of the average material and labor cost to replace the structure \$28,490.

The central dispute is how to calculate the structure’s value. The SMP, in describing permitted uses of pre-existing non-conforming structures, only allows reconstruction of such structures if to current standards if it is “damaged to an extent exceeding 75% of replacement costs.”³⁵ But in describing allowable repairs and restorations, the SMP provides that a pre-existing non-conforming structure can be repaired if it “is damaged to an extent that does not exceed 75% of the existing assessed value of the building or structure for tax purposes.”³⁶ As the specific

²⁶ SMP 2.05.

²⁷ SMP 2.05.a

²⁸ SMP 12.03.

²⁹ Exh. 11.10.

³⁰ See Exh. 11.21 at 12.

³¹ Exh. 11.21 at 12.

³² See Exh. 11.21 at 12.

³³ Exh. 11.1 at 1; Exh. 11.21 at 12.

³⁴ Exh. 11.22 at 1.

³⁵ SMP 12.02.4 (emphasis added).

³⁶ SMP 12.03.2 (emphasis added).

controls over the general,³⁷ SMP's reference to the tax assessment value is how the value of the structure is determined.

It is undisputed that Leveck undertook significant work on the boathouse. This work was outside the scope of the permit he received. He did not seek a revision to his permit prior to starting work. The Building Official was correct in determining that the tax assessment amount, in keeping with the clear language of SMP 14.03.2, was the relevant value of the structure to determine the extent of allowable repairs. The repairs significantly exceeded 75% and thus are unlawful and must be removed.

VI. CONCLUSION

The County requests that the Hearing Examiner deny the appeal and sustain the Administrative Order to Abate.

DATED this 29th day of July, 2026.

RICHARD A. WEYRICH
PROSECUTING ATTORNEY
FOR SKAGIT COUNTY



JASON C. D'AVIGNON, WSBA #44259
Civil Deputy Prosecuting Attorney
Attorney for Skagit County

³⁷ *Washington State Ass'n of Cnty. v. State*, 199 Wn.2d 1, 13 (2022).

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I filed the foregoing **Prehearing Brief** and **Staff Report** with the Skagit County Hearing Examiner via email to the Hearing Coordinator at HEhearings@co.skagit.wa.us and served this document, and/or otherwise provided, the document via that same email to:

- Lisa Chu-Greenough, Hearing Coordinator, at lisachug@skagitcountywa.gov
- Adriana Clifton, Counsel for Appellants, at axc@cliftonlawpllc.com

Dated this 29th day of July, 2026, at Mount Vernon, Washington.



JASON C. D'AVIGNON, WSBA #44259
Civil Deputy Prosecuting Attorney
Attorney for Skagit County